

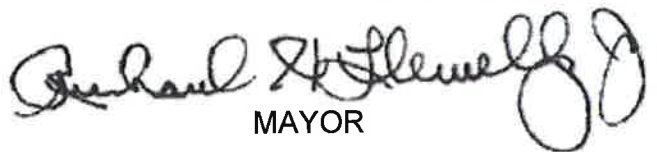
0150-03656-0099

TRANSMITTAL

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|---|------------------|-----------------------------|
| TO Eugene D. Seroka, Executive Director Harbor Department | DATE 12/01/21 | COUNCIL FILE NO. 18-0972 |
| FROM The Mayor | | COUNCIL DISTRICT 15 |

**PROPOSED PERMANENT ORDER AMENDING PORT OF LOS ANGELES TARIFF NO. 4,
SECTION 23, ITEM NO. 2325, OCEAN COMMON CARRIER INCENTIVE PROGRAM, TO
EXPAND QUALIFYING PROVISIONS**

Transmitted for further processing and Council consideration. See the
City Administrative Officer report attached.


MAYOR

MWS:JCY:10220008t

(Rich Llewellyn for)

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: November 16, 2021

CAO File No. 0150-03656-0099

Council File No. 18-0972

Council District: 15

To: The Mayor

From: Matthew W. Szabo, City Administrative Officer



Reference: Correspondence from the Harbor Department dated May 20, 2021; referred by the Mayor for report June 9, 2021

Subject: **PROPOSED PERMANENT ORDER AMENDING PORT OF LOS ANGELES
TARIFF NO. 4, SECTION 23, ITEM NO. 2325, OCEAN COMMON CARRIER
INCENTIVE PROGRAM, TO EXPAND QUALIFYING PROVISIONS**

RECOMMENDATIONS

Approve Harbor Department (Port) Resolution No. 21-9813 authorizing the adoption of Permanent Order No. 21-7303 and a corresponding Ordinance to amend Port of Los Angeles Tariff No. 4, Section 23, Incentives – General Rules and Regulations, Item No. 2325, Ocean Common Carrier Incentive Program, to expand qualifications for the program; and, return the document to the Port for further processing, including Council consideration.

SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 21-9813 authorizing the adoption of Permanent Order No. 21-7303 and a corresponding Ordinance to amend Port of Los Angeles (POLA) Tariff No. 4 Port Fees, Rules and Regulations (Tariff), Section 23, Incentives – General Rules and Regulations, Item No. 2325, Ocean Common Carrier Incentive Program. The proposed Tariff Amendment amends the Port's Ocean Common Carrier (OCC) Incentive Program to broaden the program's focus to include incentivizing new business generation from its previous focus on growing existing business relationships by removing a "qualifying year" requirement. The proposed adjustment also allows existing shipping companies to qualify for the incentive despite disrupted shipping movement in 2020 due to Coronavirus Disease 2019 (Covid-19)-related industry shutdowns. The Port estimates that approval of the proposed Tariff Amendment will generate approximately \$6.18 million in additional incentive payout expenditures from the Port in 2021-2022.

BACKGROUND

The Port periodically pursues incentive programs with various POLA clients and partners in an effort to increase the Port's competitive position, which is a key component of the Port's Strategic Plan. The Port's OCCs are container ship companies that transport cargo for compensation through the POLA. The shipping industry typically measures container cargo volume through the twenty-foot equivalent (TEU) unit. The Board approved creation of the OCC Incentive Program effective September 1, 2018 (C.F. 18-0972), allowing eligible OCCs to receive a \$10.00 per TEU financial incentive, up to \$2 million per year, on growth in volume of TEUs through the POLA over a baseline volume and beyond Transpacific Market percentage growth. After meeting certain administrative and electronic data transmission requirements, OCCs could qualify for incentives by meeting certain performance criteria:

- 1) Incentive Period (current fiscal year) volumes exceeding Transpacific Market percentage growth and Baseline Year (one year prior) volumes;
- 2) Baseline Year volumes greater than or equal to Qualifying Year (two years prior) volumes;
- 3) Qualifying Year volumes greater than zero.

Payouts occur the fiscal year (FY) following the Incentive Year. The OCC Incentive Program essentially required that OCCs be established Port callers, qualifying for the Incentive only after more than two full years of TEU volume delivered. The original intent of the OCC Incentive Program was to provide a financial incentive to OCCs that continuously grew their existing business through the POLA, and avoid competing directly with the neighboring Port of Long Beach (POLB).

However, the Port reports that due to the impact of the Coronavirus Disease 2019 (Covid-19) pandemic and resulting shutdown of industries in the first half of 2020, Fiscal Year (FY) 2020 container volumes handled by OCCs, through no fault of their own, declined relative to FY 2019, effectively disqualifying all OCCs from meeting the OCC Incentive Program Incentive Period requirements for FY 2020 and FY 2021. The proposed Tariff Amendment, effective April 1, 2021, eliminates performance criteria 2) and 3) described above, requiring OCCs only to have TEU volume delivered in excess of their Baseline Year volumes and the Incentive Period Transpacific Market percentage growth to qualify for the Incentive Program. OCCs therefore could qualify for a payout for FY 2021 as long as their FY 2021 Incentive Period TEU volume delivered exceeded both their FY 2020 volume delivered and FY 2021 Transpacific Market percentage growth. Removal of the "but not zero" requirement would be retroactive to the beginning of the program, September 1, 2018, allowing newer market entrant OCCs to receive the same waiver of the requirement as existing OCCs did at the program's inception. The Port reports that two OCCs would benefit from this "but not zero" waiver, resulting in incentive payouts totaling \$2.16 million. The Port additionally states that eliminating the Qualifying Year provision would bring the OCC Incentive Program more in line with POLB's, which does not have such an extensive existing relationship requirement. The Board originally approved removal of the Qualifying Year requirement at its meeting on April 1, 2021. On May 6, 2021, the Board rescinded that approval and approved the current proposed Amendment to include removal of the "but not zero" requirement. The Port has employed different versions of an OCC incentive program in the past, including in 2014 (C.F. 14-0186). The Board has authority to terminate the OCC Incentive Program at its discretion.

A Temporary Order, authorized by the Board and effective April 1, 2021, authorized the same provisions as the proposed Tariff Amendment, but is only effective for 90 days pending Council approval of the Permanent Order and corresponding Ordinance, pursuant to Charter Sections 653(a) and (b). The Port is a member of the California Association of Port Authorities (CAPA). Adoption of the proposed Tariff Amendment is subject to CAPA review and approval.

The Port estimates that approval of the proposed Tariff Amendment will generate approximately \$6.18 million in additional incentive payouts from the Port, mainly in FY 2022 from FY 2021 movements, including \$4 million from eliminating the Qualifying Year performance provision and \$2.18 million from eliminating the “but not zero” provision. The Port reports that these incentives could help increase the Port’s market share, with a potential of \$6.28 million in increased annual revenue, based on growth of one percent. The Port additionally states that attracting a new OCC could bring the Port \$18.5 million in additional annual revenue.

The City Attorney has approved the proposed Amendment, Order and ordinance as to form and legality. In accordance with Charter Section 653, the Council must approve the ordinance to amend Tariff No. 4 before it can become effective permanently. The Port states that the approval of the proposed Order and ordinance and proposed action is an administrative activity. Therefore, the Port Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

FISCAL IMPACT STATEMENT

The proposed Harbor Department (Port) Resolution No. 21-9813 authorizing the adoption of Permanent Order No. 21-7303 and a corresponding Ordinance to amend Port of Los Angeles (POLA) Tariff No. 4 Port Fees, Rules and Regulations, Section 23, Incentives – General Rules and Regulations, Item No. 2325, Ocean Common Carrier Incentive Program, to expand qualifications for the program is anticipated to result in \$6.18 million in incentive payouts from the Port in Fiscal Year 2022. The Port has budgeted funding in the Harbor Revenue Fund for these costs. Future funding will be subject to the Port’s annual budget adoption process. Payouts for the OCC Incentive Program are the responsibility of the Port and the Harbor Revenue Fund. There is no impact on the City General Fund.